



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

ZARINS et al.

Serial No.: 10/639,050

Filed: August 11, 2003

For: BIOPSY MARKER DELIVERY  
SYSTEM

Group Art Unit: 3736

Examiner: Charles A. Marmor II

TERMINAL DISCLAIMER

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Diane K. Wong, represent that I am an attorney of record for the above-identified application. Ethicon Endo-Surgery, Inc. (hereinafter referred to as "Ethicon Endo-Surgery") is the owner of 100% interest in the above-identified invention by virtue of assignment from the inventors to Vivant Medical, Inc., and from Vivant Medical, Inc. to Ethicon Endo-Surgery, Inc. The assignments were recorded in the Patent and Trademark Office on February 13, 2002, on Reel 012651, Frame 0994 and on December 16, 2004, on Reel 015460, Frame 0497, respectively.

Ethicon Endo-Surgery hereby disclaims the terminal part of any patent granted on the above-identified application that would extend beyond the expiration date of U.S. Patent No. 6,605,047. Moreover, Ethicon Endo-Surgery hereby agrees that any patent so granted on the above-identified application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 6,605,047, this agreement to run with

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, PO Box 1450 Alexandria, VA 22313-1450.

March 2, 2005  
Date of Deposit  
IR1:1063026.1

*Cynthia B. Pacheco*  
Cynthia B. Pacheco

10639050  
03/08/2005 EABUBAK1 00000026 502862  
65.00 DA  
02 FC:2814

any patent granted on the above-identified application and to be binding upon Ethicon Endo-Surgery, its successor, or assigns.

Ethicon Endo-Surgery does not disclaim any terminal part of any patent granted on the above-identified application prior to the expiration date of the full statutory term of U.S. Patent No. 6,605,047 in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. §1.312(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

The Commissioner is hereby authorized to charge \$ 55.00 to Deposit Account No. 50-2862 for the above fee(s). If any additional fees are necessitated by the filing of this document, please charge Deposit Account No. 50-2862.

Respectfully submitted,

O'MELVENY & MYERS LLP

Dated: March 2, 2005

By: *Diane K. Wong*  
Diane K. Wong  
Reg. No. 54,550  
Attorneys for Applicant

DKW/cp  
114 Pacifica, Suite 100  
Irvine, CA 92618-3315  
(949) 737-2900